

§ 1001.9

6 CFR Ch. X (1–14 Edition)

expedited processing, you must demonstrate a compelling need for such processing.

(1) For requests for expedited processing, a “compelling need” involves:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) A request made by a person primarily engaged in disseminating information, with a time urgency to inform the public of actual or alleged federal government activity.

(2) Your request for expedited processing must be in writing and may be made at the time of the initial FOIA request or at any later time.

(3) Your request for expedited processing must include a statement, certified to be true and correct to the best of your knowledge and belief, explaining in detail the basis for requesting expedited processing. If you are a person primarily engaged in disseminating information, you must establish a particular urgency to inform the public about the federal government activity involved in the request.

(4) The FOIA Officer will decide whether to grant or deny your request for expedited processing within ten calendar days of receipt. You will be notified in writing of the determination. Appeals of adverse decisions regarding expedited processing shall be processed expeditiously.

§ 1001.9 Business information.

(a) *Designation of confidential business information.* In the event a FOIA request is made for confidential business information previously submitted to the Government by a commercial entity or on behalf of it (hereinafter ‘submitter’), the regulations in this section apply. When submitting confidential business information, you must use a good-faith effort to designate, by use of appropriate markings, at the time of submission or at a reasonable time thereafter, any portions of your submission that you consider to be exempt from disclosure under FOIA Exemption 4, 5 U.S.C. 552(b)(4). Your designation will expire ten years after the date of submission unless you request, and

provide justification for, a longer designation period.

(b) *Notice to submitters.* Whenever you designate confidential business information as provided in paragraph (a) of this section, or the Board has reason to believe that your submission may contain confidential business information, we will provide you with prompt written notice of a FOIA request that seeks your business information. The notice shall:

(1) Give you an opportunity to object to disclosure of your information, in whole or in part;

(2) Describe the business information requested or include copies of the requested records or record portions containing the information; and

(3) Inform you of the time frame in which you must respond to the notice.

(c) *Opportunity to object to disclosure.* The Board shall allow you a reasonable time to respond to the notice described in paragraph (b) of this section. If you object to the disclosure of your information, in whole or in part, you must provide us with a detailed written statement of your objection. The statement must specify all grounds for withholding any portion of the information under any FOIA exemption and, when relying on FOIA Exemption 4, it must explain why the information is a trade secret or commercial or financial information that is privileged and confidential. If you fail to respond within the time frame specified in the notice, the Board will conclude that you have no objection to disclosure of your information. The Board will only consider information that we receive within the time frame specified in the notice.

(d) *Notice of intent to disclose.* The Board will consider your objection and specific grounds for non-disclosure in deciding whether to disclose business information. Whenever the Board decides to disclose business information over your objection, we will provide you with written notice that includes:

(1) A statement of the reasons why each of your bases for withholding were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time after the notice.

(e) *Exceptions to the notice requirement.* The notice requirements of paragraphs (c) and (d) of this section shall not apply if:

(1) The Board determines that the information shall not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600;

(4) The designation made by the submitter under paragraph (a) of this section appears obviously frivolous, except that, in such a case, the Board shall, within a reasonable time prior to the date the disclosure will be made, give the submitter written notice of the final decision to disclose the information.

(f) *Notice to requesters.* Whenever we provide a submitter with the notice described in paragraph (b) of this section, we also will provide notice to the requester that notice and opportunity to object to the disclosure are being provided to the submitter.

§ 1001.10 Fees.

(a) We will charge fees that recoup the full allowable direct costs we incur in processing your FOIA request. Fees may be charged for search, review or duplication. As a matter of administrative discretion, the Board may release records without charge or at a reduced rate whenever the Board determines that the interest of the United States government would be served. We will use the most efficient and least costly methods to comply with your request.

(b) With regard to manual searches for records, we will charge the salary rate(s) (calculated as the basic rate of pay plus 16 percent of that basic rate to cover benefits) of the employee(s) performing the search.

(c) In calculating charges for computer searches for records, we will charge at the actual direct cost of providing the service, including the cost of operating the central processing unit directly attributable to searching for records potentially responsive to your FOIA request and the portion of the

salary of the operators/programmers performing the search.

(d) We may only charge requesters seeking documents for commercial use for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review—that is the review undertaken the first time we analyze the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. We may assess the costs for such subsequent review.

(e) Records will be duplicated at a rate of \$.10 per page, except that the Board may adjust this rate from time to time by rule published in the FEDERAL REGISTER. For copies prepared by computer, such as tapes, CDs, DVDs, or printouts, we will charge the actual cost, including operator time, of production. For other methods of reproduction or duplication, we will charge the actual direct costs of producing the document(s). If we estimate that duplication charges are likely to exceed \$25, we will notify you of the estimated amount of fees, unless you indicated in advance your willingness to pay fees as high as those anticipated. Our notice will offer you an opportunity to confer with Board personnel to reformulate the request to meet your needs at a lower cost.

(f) We will charge you the full costs of providing you with the following services:

(1) Certifying that records are true copies; or

(2) Sending records by special methods such as express mail.

(g) We may assess interest charges on an unpaid bill starting on the 31st calendar day following the day on which the billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing.

(h) We will not charge a search fee for requests by educational institutions, non-commercial scientific institutions, or representatives of the news